

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CHARLES WILLIAMS,

Plaintiff,
v.

Civil Action No. 08-10569
HONORABLE DENISE PAGE HOOD

JOSEPH JANSON, LT. ADAMS
and DAWN ISON,

Defendants.

MEMORANDUM OPINION AND ORDER OF SUMMARY DISMISSAL

I. Introduction

Before the Court is Plaintiff Charles Williams' *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983. Plaintiff is a state prisoner currently confined at the Mid-Michigan Correctional Facility in St. Louis, Michigan. For the reasons stated below, the complaint is **DISMISSED WITHOUT PREJUDICE**.

II. Standard of Review

Plaintiff has been allowed to proceed without prepayment of fees. See 28 § U.S.C. 1915(a); *McGore v. Wrigglesworth*, 114 F. 3d 601, 604 (6th Cir. 1997). However, 28 U.S.C. § 1915(e)(2)(B) states:

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that:

(B) the action or appeal:

- (i) is frivolous or malicious;
- (ii) fails to state a claim on which relief may be granted; or
- (iii) seeks monetary relief against a defendant who is immune from such relief.

A complaint is frivolous if it lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490

U.S. 319, 325 (1989); *see also Denton v. Hernandez*, 504 U.S. 25, 32 (1992). *Sua sponte* dismissal is appropriate if the complaint lacks an arguable basis when filed. *McGore*, 114 F. 3d at 612; *Goodell v. Anthony*, 157 F. Supp. 2d 796, 799 (E.D. Mich. 2001).

To establish a *prima facie* case under 42 U.S.C. § 1983, a civil rights plaintiff must establish that: (1) the defendant acted under color of state law; and (2) the offending conduct deprived the plaintiff of rights secured by federal law. *Bloch v. Ribar*, 156 F. 3d 673, 677 (6th Cir. 1998) (citing *Parratt v. Taylor*, 451 U.S. 527, 535 (1981)). “If a plaintiff fails to make a showing on any essential element of a § 1983 claim, it must fail.” *Redding v. St. Eward*, 241 F. 3d 530, 532 (6th Cir. 2001).

III. Complaint

Plaintiff claims that Defendants conspired during his criminal trial resulting in his conviction of Involuntary Manslaughter. Defendant Joseph Jansen was the prosecutor at Plaintiff’s trial, Lieutenant Adams was a potential witness and Dawn Ison was Plaintiff’s defense counsel. Plaintiff is currently serving a sentence of two to fifteen years imprisonment. Plaintiff seeks monetary, injunctive, and declarative relief.

IV. Discussion

Plaintiff’s complaint is subject to dismissal for several reasons. First, to the extent that Plaintiff seeks monetary damages arising from his criminal conviction, he would be unable to obtain such damages absent a showing that his criminal conviction had been overturned. To recover monetary damages for an allegedly unconstitutional conviction or imprisonment, a § 1983 plaintiff must prove that the conviction or sentence was reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal, or called into question by the issuance of a federal writ of habeas corpus. *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). A § 1983 suit in which a

plaintiff seeks damages in connection with proceedings leading to his allegedly wrongful state court conviction is not cognizable where the plaintiff's conviction has never been reversed or otherwise invalidated. *See Patrick v. Laskaris*, 25 F. Supp. 2d 432, 433 (S.D.N.Y. 1998). Because Plaintiff does not allege that his conviction has been overturned, expunged, or called into question by a writ of habeas corpus, his allegations relating to his criminal prosecution, conviction, and incarceration against the defendants fail to state a claim for which relief may be granted and must, therefore, be dismissed. *See Adams v. Morris*, 90 Fed. Appx. 856, 858 (6th Cir. 2004); *Dekoven v. Bell*, 140 F. Supp. 2d 748, 756 (E.D. Mich. 2001).

To the extent that Plaintiff is seeking to have his criminal convictions vacated or set aside in this civil rights action, the civil rights complaint is subject to dismissal. Where a state prisoner is challenging the very fact or duration of his or her physical imprisonment and the relief that he or she seeks is a determination that he or she is entitled to immediate release or a speedier release from that imprisonment, his or her sole federal remedy is a petition for writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Section 1983 cannot serve as a basis to challenge the fact of a plaintiff's criminal conviction; the proper instrument for bringing such a challenge would be either on direct appeal, a state post-conviction relief motion, or a petition for a federal writ of habeas corpus. *See Messa v. Rubin*, 897 F. Supp. 883, 885 (E.D. Pa. 1995); *See also Bey v. Gulley*, 2002 WL 1009488, * 2 (E.D. Mich. May 6, 2002). An action which is properly one for habeas relief does not state a cognizable claim under § 1983. *See Benson v. New Jersey State Parole Bd.*, 947 F. Supp. 827, 831 (D.N.J. 1996). When the effect of granting equitable relief under the civil rights statute would be to substitute § 1983 for a petition for writ of habeas corpus to attack a state court conviction, a prisoner fails to state a claim under § 1983. *Palmer v. Nebraska Supreme Court*, 927

F. Supp. 370, 371 (D. Neb. 1996)(*quoting Eutzy v. Tesar*, 880 F. 2d 1010, 1011 (8th Cir. 1989)). A plaintiff therefore cannot seek declaratory or injunctive relief relating to his conviction in a § 1983 action. *Nelson v. Campbell*, 124 S. Ct. 2117, 2122 (2004); *St. Germain v. Isenhower*, 98 F. Supp. 2d 1366, 1373 (S.D. Fla. 2000).

Since Plaintiff appears to be asking this Court to reverse his criminal conviction, his complaint would stand in habeas corpus, and not under the civil rights statute. The current defendants would therefore not be the proper respondent. *See Urrutia v. Harrisburg County Police Dept.*, 91 F. 3d 451, 462 (3rd Cir. 1996)(citing to Rule 2(a), Rules Governing § 2254 Cases). The proper respondent would be the warden of the Facility where Plaintiff is incarcerated. Plaintiff has in fact filed a habeas case before this Court, which is currently pending.

When a prisoner's civil rights claim is barred by the *Heck v. Humphrey* doctrine, the appropriate course for a federal district court is to dismiss the claim for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(h)(3), rather than to dismiss the complaint with prejudice as being frivolous, because the former course of action is not an adjudication on the merits and would allow the prisoner to reassert his claims if his conviction or sentence is later invalidated. *See Murphy v. Martin*, 343 F. Supp. 2d 603, 609 (E.D. Mich. 2004). Because this Court is dismissing Plaintiff's § 1983 complaint under *Heck*, the dismissal will be without prejudice. *Diehl v. Nelson*, 198 F. 3d 244, 1999 WL 1045076 (6th Cir. Nov. 12, 1999)(citing to *Fottler v. United States*, 73 F.3d 1064, 1065 (10th Cir. 1996)).

V. Conclusion

Accordingly, for the reasons set forth above,

IT IS ORDERED that the complaint is **DISMISSED WITHOUT PREJUDICE**.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: March 20, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 20, 2008, by electronic and/or ordinary mail.

S/William F. Lewis
Case Manager